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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 11 2003

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE
EASTERN DISTRICT OF WASHINGTON AT YAKIMA

JAGRUT SHAH,

Plaintiff,

v.

ARGUS SERVICES, INC., a Washington
Corporation and JIM SCHOENLEBER,

Defendant.

CY-03-3026-RHV

COMPLAINT
FOR DAMAGES
AND DEMAND
FOR JURY TRIAL

Jagrut Shah alleges:

I. PARTIES

1.0 Jagrut Shah resides in Yakima County, Washington. Mr. Shah's
parents are from the country of India. Mr. Shah was born in Africa. He is
dark skinned. He is of the Hindu religion. Mr. Shah is an American citizen.

Complaint for Damages
KTM/14379ce

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2 1.1 Argus Services, Inc., (Argus Services) is a Washington corporation that
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4 resides and does business in Yakima County, Washington. Mr. Schoenleber
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6 resides in Spokane County, Washington.
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8 9 II. JURISDICTION AND VENUE

10 2.0 28 U.S.C. § 1331 grants the District Court jurisdiction because Mr.
11
12 Shah alleges that Argus Services violated 42 U.S.C. § 1981, 42 U.S.C. §
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14 2000e-2(a) and 28 U.S.C. § 207(a) which create civil actions arising under
15
16 the laws of the United States. Also, Mr. Shah alleges that Mr. Schoenleber
17
18 violated 42 U.S.C. § 1981 and 28 U.S.C. § 207(a).
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21 2.1 The District Court has supplemental jurisdiction under 28 U.S.C. §
22
23 1367 over the state claims that are brought under Washington's Law Against
24
25 Discrimination, RCW 49.60, and under Washington's Minimum Wage Act
26
27 (MWA) because a substantial federal question exists. Also, the state claims
28
29 form part of the same case in controversy under the United States
30
31 Constitution.
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1 2.2 The Eastern District of Washington has venue under 28 U.S.C. § 1391
2 (a) and (b) because the defendants reside in the jurisdictional district.
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6 2.3 Mr. Shah filed a claim with the Equal Employment Opportunities
7 Commission (EEOC) on or about December 16, 2002. On February 18,
8 2003, the EEOC issued a Notice of Right to Sue to Mr. Shah.
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13 III. FACTS 14

15 3.0 Mr. Shah began working for Argus Services in March 1995. Argus
16 Services provides security services to businesses and to federal, state and
17 local governments.
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22 3.1 From approximately March 1995, until March 1996, Mr. Shah worked
23 as an area supervisor. In March 1996, Mr. Shah was promoted, via a title
24 change, to a District Manager position. Mr. Shah performed some
25 management duties for Argus, but spent approximately seventy percent of his
26 time performing security.
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1 3.2 Argus Services paid Mr. Shah overtime for hours worked in excess of
2 40 hours per week until approximately September 2000. After that time,
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4 Argus Services refused to pay overtime. Argus Services employed Mr. Shah
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6 after that time for more than forty hours per week, but failed to pay for the
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8 overtime at the rate of one and one-half of Mr. Shah's pay.
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11 3.3 Until November 2001, Mr. Shah was paid on an hourly basis, but not
12
13 paid for hours in excess of forty hours per week, even though he routinely
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15 worked 55-65 hours per week. Argus Services paid Mr. Shah on a salary
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17 basis after November 2001. In March 2002, he requested that he be allowed
18
19 to go back to an hourly basis. Argus Services refused.
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22 3.4 Since Mr. Shah has worked at Argus Services, Mr. Schoenleber has
23
24 been the principal shareholder and Chief Executive Officer of Argus Services.
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26 Since approximately 1997, Mr. Schoenleber, almost on a semimonthly basis,
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28 has referred to Mr. Shah with racial epithets on the basis of race. In the 180
29
30 days prior to Mr. Shah filing his claim with the EEOC, Mr. Schoenleber
31
32 referred to Mr. Shah as a "camel jockey" numerous times, asked Mr. Shah
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1 “where’s your camel parked” numerous times, and asked him, “How many 7-
2 Elevens do you own?” numerous times. He also frequently called him “rag
3 head” and made other disparaging remarks. All of the comments affected Mr.
4 Shah and caused him severe emotional distress. The comments also altered
5 his working conditions.
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11 3.5 Prior to the 180 days before filing with the EEOC, Mr. Schoenleber
12 made comments to Mr. Shah that he was strip searched when he was coming
13 back from a trip to Las Vegas because he “looked like a terrorist from Saudi
14 Arabia.” Mr. Schoenleber also referred to Mr. Shah as indicated in paragraph
15 3.4.
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22 3.6 Mr. Shah frequently told Mr. Schoenleber not to refer to him with
23 racial epithets. Mr. Shah reported Mr. Schoenleber’s epithets to Argus
24 Services’ human resources department on numerous occasions. The last
25 contact that Mr. Shah made with Argus Services’ human resources was on
26 June 2, 2002, when he told Jean E. Kurtz that Mr. Schoenleber was referring
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1 to him with racial epithets. Ms. Kurtz said that she would take care of it.

2 None of Mr. Schoenleber's conduct changed after any of Mr. Shah's
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4 complaints to Argus Services' human resources department.
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8 3.7 On August 23, 2002, Mr. Shah complained to human resources about
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10 Argus Services' continued failure to pay him overtime. The same day that
11
12 Mr. Shah complained to human resources, he was having lunch with Rick
13
14 Sawyer and Roger Senecal, two managers of Argus, when Mr. Schoenleber
15
16 came to the restaurant. Mr. Schoenleber said, among other things, cursed at
17
18 Mr. Shah. He then said that Mr. Shah "should be lucky to have a job after
19
20 9/11!"
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22 3.8 Mr. Shah quit Argus Services on September 6, 2002, as a result of the
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24 continued racial harassment that he suffered from Mr. Schoenleber. Mr.
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26 Schoenleber's racial harassment deliberately made Mr. Shah's job so
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28 intolerable that Mr. Shah was forced to quit.
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2 3.9 All acts by Mr. Schoenleber with regard to Mr. Shah were done within
3
4 the scope of his employment with Argus Services, as an officer and owner of
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6 Argus Services.
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10 3.10 Three promotions came open during the time that Mr. Shah was
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12 working for Argus Services. The first possible promotion was in
13
14 approximately March 2000; the second in approximately February 2001; and
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16 the third was in approximately July 2002. Mr. Shah applied for each one of
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18 the promotions and was the most qualified candidate for each position. Argus
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20 Services promoted less qualified Caucasians instead of Mr. Shah for each
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22 position. The promotions would have paid Mr. Shah more than he was
23
24 making.
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26 3.11 Argus Services had more than 300 employees during all times that Argus
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28 Services employed Mr. Shah.
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IV. 42 U.S.C. § 1981

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2 4.0 Mr. Shah was within the jurisdiction of the United States when Argus
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4 Services and Mr. Schoenleber refused to promote him, created a hostile work
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6 environment and constructively terminated him on the basis of race. Argus
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8 Services and Mr. Schoenleber intentionally denied Mr. Shah the promotions
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10 on the basis of race, even though he was the most qualified for the positions.
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12 Also, Argus Services and Mr. Schoenleber created and allowed unwelcome
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14 racial epithets and insults that were so severe and pervasive that it altered the
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16 contracted terms of his employment and forced him to resign. As a direct
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18 result, Mr. Shah was denied the same opportunity to contract under 42 U.S.C.
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20 § 1981 as is enjoyed by white citizens.
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23 4.1 Argus Services and Mr. Schoenleber acted with reckless or intentional
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25 disregard of Mr. Shah's federally protected civil rights. As a result, Argus
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27 Services and Mr. Schoenleber are liable for punitive damages in an amount to
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29 be proven at the time of trial.
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1 4.2 Mr. Shah has suffered past and future special damages, including lost
2 wages and benefits, damages for emotional distress, costs and attorney's fees
3 for violation of 42 U.S.C. § 1981 in an amount to be proven at the time of
4 trial.
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9 **V. 42 U.S.C. § 2000e-2(a)**

10 5.0 Mr. Shah is a member of a racial and national origin minority group.
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12 Argus Services was an employer pursuant to 42 U.S.C. § 2000e. Argus
13 Services discriminated against Mr. Shah in terms of his working conditions by
14 failing to promote him over less qualified Caucasian employees. Also, Argus
15 Services created and allowed unwelcome racial epithets and insults that were
16 so severe and pervasive that they altered the terms of Mr. Shah's employment.
17 They also created working conditions that were so intolerable that Mr. Shah
18 was forced to resign. As a direct result of the racial epithets, Mr. Shah quit
19 Argus Services. Mr. Shah quitting was a constructive discharge.
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29 5.1 Argus Services acted with reckless or intentional disregard of Mr.
30 Shah's federally protected civil rights in violation of 42 U.S.C. § 1981a. As a
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1 result, Argus Services is liable for punitive damages in an amount to be
2 proven at the time of trial.
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6 5.2 Mr. Shah has suffered special damages, including lost wages and
7 benefits, damages for emotional distress, costs and attorney's fees for
8 violation of 42 U.S.C. 2000e-2 in an amount to be proven at the time of trial.
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11 12 **VI. RCW 49.60**

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14 6.0 Argus Services and Mr. Schoenleber discriminated against Mr. Shah in
15 the terms and conditions of his employment in violation of RCW
16 49.60.180(3) by creating and allowing an offensive, unwelcome work
17 environment of racial epithets and insults against Mr. Shah. The racial
18 epithets and insults were because of race, color and national origin. They
19 affected Mr. Shah's terms of employment.
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27 6.1 Argus Services and Mr. Schoenleber violated RCW 49.60.180(3) by
28 failing to promote Mr. Shah over less qualified Caucasian candidates on the
29 basis of race.
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1 6.2 Argus Services and Mr. Schoenleber constructively discharged Mr.
2 Shah by deliberately making Mr. Shah's working environment so intolerable
3 that Mr. Shah was forced to resign.
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7 6.3 As a direct result of the discrimination, Mr. Shah has suffered special
8 damages, including lost wages and benefits, emotional distress, costs and
9 attorney's fees in an amount to be proven at the time of trial.
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14 **VII. VIOLATION OF RCW 49.46.130,**
15 **WASHINGTON'S MINIMUM WAGE ACT**
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17 7.0 Argus Services and Mr. Schoenleber were employers of Mr. Shah
18 pursuant to RCW 49.46.010(4). They were covered by RCW 49.46.130(1)
19 of Washington's Minimum Wage Act (MWA) that requires that employees
20 be paid at a rate of one and one-half times the regular rate of pay for a
21 workweek longer than 40 hours. Argus Services and Mr. Schoenleber
22 violated this requirement.
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30 7.1 As a result of the violation of the MWA, Argus Services and Mr.
31 Schoenleber are liable for the amount of overtime earned by Mr. Shah. Also,
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1 Argus Services and Mr. Schoenleber are liable for the full wage, less
2 statutory offset, costs and attorney's fees under RCW 49.46.090 and RCW
3 49.48.030 in an amount to be proven at the time of trial.
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8 **VIII. VIOLATION OF RCW 49.52.050(2)**

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10 8.0 Argus Services willfully and with intent to deprive Mr. Shah of
11 overtime, failed to pay him overtime as required by the laws of the state of
12 Washington and by the federal Fair Labor Standards Act (FLSA). This
13 constituted a violation of RCW 49.52.050(2).
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19 8.1 As a result of the violation of RCW 49.52.050(2), Argus Services and
20 Mr. Schoenleber are liable for double damages under RCW 49.52.070 and
21 attorney's fees under RCW 49.48.030 in an amount to be proven at the time
22 of trial.
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27 **IX. FAIR LABOR STANDARDS ACT**

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29 9.0 Argus Services and Mr. Schoenleber were employers of Mr. Shah under
30 29 U.S.C. § 203. Mr. Shah was an employee under 29 U.S.C. § 203.
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1 9.1 Argus Services and Mr. Schoenleber failed to pay Mr. Shah overtime as
 2 required by 29 U.S.C. § 207. Argus Services and Mr. Schoenleber failed to
 3 act in good faith. As a result, Argus Services and Mr. Schoenleber are liable
 4 to Mr. Shah for unpaid overtime and double damages under 29 U.S.C. §
 5 216(b) in an amount to be proven at the time of trial. They are also liable for
 6 punitive damages in an amount to be proven at the time of trial.
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11 **X. DEMAND FOR JURY**

12 10.0 Mr. Shah demands a jury trial pursuant to Fed.R.Civ.P. 38.
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17 WHEREFORE, Mr. Shah prays for relief as follows:
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20 1. For damages under 42 U.S.C. § 1981 for lost pay, emotional distress,
 21 punitive damages, attorney's fees and costs against Argus Services and Mr.
 22 Schoenleber because of the improper denial of the promotions, hostile work
 23 environment and constructive discharge;
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27 2. If Mr. Shah may not recover damages under 42 U.S.C. § 1981, for
 28 damages under 42 U.S.C. § 2000e-5 and 42 U.S.C. § 1981a against Argus
 29 Services for lost pay, emotional distress, punitive damages, attorney's fees
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35 Complaint for Damages
 KTM/14379ce

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2 and costs because of the improper denial of the promotions, hostile work
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4 environment and constructive discharge;
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8 3. For damages under RCW 49.60.030(2) against Argus Services and Mr.
9
10 Schoenleber for lost pay, emotional distress, attorney's fees and costs
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12 because of the improper denial of the promotions, hostile work environment
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14 and constructive discharge;
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17 4. For damages under RCW 49.46.090 for violation of Washington's MWA
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19 against Argus Services and Mr. Schoenleber for overtime pay, attorney's fees
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21 and costs;
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24 5. For double damages under RCW 49.52.070 for violation of the MWA
25
26 and FLSA and their implementing regulations against Argus Services and Mr.
27
28 Schoenleber.
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1 6. For damages under 29 U.S.C. § 216 for violation of the FLSA against
2 Argus Services and Mr. Schoenleber for overtime pay, punitive damages,
3 attorney's fees and costs;
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8 7. For such other and further relief as the court may deem just and
9 equitable.
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12 DATED this 6th day of March 2003.
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14
15 VELIKANJE, MOORE & SHORE, P.S.
16 Attorneys for Plaintiff
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18
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